

BEFORE THE  
SHORELINES HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF A SHORELINE  
SUBSTANTIAL DEVELOPMENT,  
CONDITIONAL USE AND VARIANCE  
PERMIT ISSUED BY CITY OF BOTHELL  
TO KING COUNTY,

JERRY AND CINDY TRUDEAU,

Appellants,

AND KEITH PITTS,

Intervenor,

v.

CITY OF BOTHELL, KING COUNTY,  
AND STATE OF WASHINGTON,  
DEPARTMENT OF ECOLOGY,

Respondents.

SHB Nos. 82-12 & 82-13

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND ORDER

THIS MATTER, the appeal from the denial of a shoreline substantial development, conditional use and variance permit, having come on regularly for formal hearing on July 22, 1992, in Lacey, Washington, and appellants Jerry and Cindy Trudeau representing themselves, respondent

1 City of Bothell was represented by its attorney, Mark A. Eames;  
2 respondent King County was represented by Fred A. Kaseburg, Deputy Pro-  
3 secuting Attorney; respondent Department of Ecology not appearing, with  
4 William A. Harrison, Administrative Law Judge, presiding, and the Board  
5 having considered the exhibits, records and files herein, and having  
6 reviewed the Proposed Order of the presiding officer mailed to the  
7 parties on the 24th day of September, 1982, and more than twenty days  
8 having elapsed from said service; and

9 The Board having received exceptions to said Proposed Order and  
10 the Board having considered the exceptions and denying same, and being  
11 fully advised in the premises, NOW THEREFORE,

12 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that said Proposed Order  
13 containing Findings of Fact, Conclusions of Law and Order dated the  
14 24th day of September, 1982, and incorporated by reference herein and  
15 attached hereto as Exhibit A, are adopted and hereby entered as the  
16 Board's Final Findings of Fact, Conclusions of Law and Order herein.

17 DATED this 4<sup>th</sup> day of November, 1982.

18 SHORELINES HEARINGS BOARD

19 David Akana  
20 DAVID AKANA, Lawyer Member

21 Gayle Rothrock  
22 GAYLE ROTHROCK, Chairman

23 Rodney M. Kerslake  
24 RODNEY M. KERSLAKE, Member

25  
26 FINAL FINAL FINDINGS OF FACT,  
27 CONCLUSIONS OF LAW & ORDER  
SHB Nos. 82-12 & 82-13

Richard A. O'Neal  
RICHARD A. O'NEAL, Member

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
SHB Nos. 82-12 & 82-13

PROPOSED FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND ORDER

This matter, the request for review of a shoreline substantial development, conditional use and variance permit, came on for hearing before the Shorelines Hearings Board on July 22, 1982. William A. Harrison, Administrative Law Judge, presided alone.

EXHIBIT A

1 Appellants Jerry and Cindy Trudeau appeared and represented  
2 themselves. Respondent City of Bothell was represented by its  
3 attorney, Mark A. Eames. Respondent King County was represented by  
4 Fred A. Kaseburg, Deputy Prosecuting Attorney. Respondent Department  
5 of Ecology did not appear. Reporter Lois Fairfield recorded the  
6 proceedings.

7 At hearing, respondent City of Bothell's motion to dismiss the  
8 Trudeau request for review was denied. Respondent City of Bothell's  
9 motion to dismiss the Pitts request for review was granted. The  
10 motion of Mr. Pitts to intervene in the Trudeau request for review was  
11 then granted. 

12 Witnesses were sworn and testified. Exhibits were examined. From  
13 testimony heard and exhibits examined, the Shorelines Hearings Board  
14 makes these

#### 15 FINDINGS OF FACT

##### 16 I

17 This matter concerns the Sammamish River shoreline within the City  
18 of Bothell.

##### 19 II

20 Within the northern region of the Seattle metropolitan area there  
21 are two paved, hiking and cycling trails which thread through a varied  
22 urban and suburban scene. One, the Burke Gilman trail, winds eastward  
23 from Lake Union to the northern tip of Lake Washington. The other,  
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1 the Sammamish River Trail, begins in Redmond and leads westward toward  
2 the northerly tip of Lake Washington but ends, in Bothell, before  
3 joining the Burke Gilman trail. Linkage of the two trails is a  
4 declared goal of both the City of Bothell and King County.

5 III

6 The proposed development in this matter is a trail that would  
7 partially, but not completely, fill in the missing link King County  
8 and the City of Bothell co-own the shoreline of the Sammamish River  
9 along which the proposed trail would be built

10 IV

11 On October 14, 1981, King County (Architecture Division) applied  
12 to the City of Bothell for a shoreline substantial development,  
13 conditional use and variance permit to construct a 10 foot wide, paved  
14 trail and 8 foot wide bridge together with necessary fill. The City  
15 of Bothell granted the requested permit which was approved by the ✓  
16 State Department of Ecology. Appellants request review of that permit.

17 V

18 King County's application specified the use of approximately 4700  
19 cubic yards of fill material. The application also contained a site  
20 plan (Exhibit R-10) showing the location of this fill wherever it  
21 would significantly affect ground contour. Much of the fill would be  
22 used to provide the normal substrate, of 6" thickness or less, to  
23 support the paved trail. Fill was proposed, also, to support the  
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1 approaches to each end of the proposed pedestrian/bicycle bridge  
2 King County proposes to use only stone rip-rap material within the  
3 100-year floodway of the Sammamish River and sand or gravel material  
4 under the trail itself.

#### 5 VI

6 King County's application contained two alternative bridge  
7 diagrams, each for a bridge 8 feet wide. The somewhat arched design  
8 has been abandoned for a concrete girder design. Footings of either  
9 bridge would be nearer than 50 feet from the ordinary high water mark  
10 and thus require a variance from Chapter VI, Section T. 9 (p. 75) of  
11 the Bothell Shoreline Master Program (BSMP). The variance granted  
12 would allow the scale of this pedestrian/bicycle bridge to remain  
13 small, would have no adverse effect upon the shoreline environment and  
14 is consistent with other activities in the area.

#### 15 VII

16 A pedestrian overpass, as proposed, is allowed as a conditional  
17 use. BSMP, Chapter VI, Section T 2.C.4 (p. 74). The proposed  
18 landfill would develop or improve recreation uses and is allowed as a  
19 conditional use. BSMP, Chapter VI, Section P.2.C.1 (p. 70).

#### 20 VIII

21 The proposed pedestrian/bicycle trail is a use permitted outright,  
22 BSMP Chapter VI, Section W.1.C.1 and 2. (p. 77), in the conservancy  
23 environment where it is proposed, BSMP, Chapter V, Section B (p. 43).

IX

This proposal for public access to public shorelines would preserve the public's opportunity to enjoy the physical and aesthetic qualities of natural shorelines without significant adverse effect upon the shoreline or adjacent environment.

X

Any Conclusion of Law which should be deemed a Finding of Fact is hereby adopted as such.

From these Findings the Board comes to these

CONCLUSIONS OF LAW

I

Appellants contend that the shoreline application is duplicitous in proposing two bridge designs without specifying which would be built. In view of the requirements of WAC 173-14-110(7) and BSMP Chapter VIII, Section E.2.(5) (p. 84) requiring dimensions of proposed structures, this was a peculiar method for the County to use in making its proposal. On the facts of this case, however, the designs do not differ in any way which is material to the contentions raised by appellants. Either constitute a pedestrian overpass allowable as a conditional use (See Finding of Fact VII, above.) Either meet the criteria for a conditional use, which criteria are promulgated as WAC 173-14-140 and BSMP Chapter VIII, Section F (pp. 85a-86). Either would require a variance for its footings. Either meet the criteria

1 for variance, which criteria are promulgated as WAC 173-14-150 and  
2 BSMP Chapter VIII, Section G (pp. 86-87). Nevertheless, appellants  
3 have shown the shoreline application to be inconsistent with standards  
4 governing it, WAC 173-14-110 and BSMP Chapter VIII (p. 84), so far as  
5 the bridge is concerned. The City of Bothell must require King County  
6 to select one of the two bridge designs presented in its application  
7 (Exhibit R-10 on this record) and specify that design in the shoreline  
8 permit.

9 II

10 Appellants also contend that the shoreline application did not  
11 disclose the volume and location of proposed fill. We have found to  
12 the contrary. (See Finding of Fact V, above.) Appellants have not  
13 shown the shoreline application to be inconsistent with standards  
14 governing it, WAC 173-14-110 and BSMP Chapter VIII (p. 84), so far as  
15 the fill is concerned.

16 III

17 The use of fill as proposed would develop or improve recreational  
18 uses (see Finding of Fact VII, above) and meets the criteria for a  
19 conditional use, which criteria is at WAC 173-14-140 and BSMP Chapter  
20 VIII, Section F (pp. 85a-86).

21 IV

22 The appropriate shoreline master program, the Shoreline Management  
23 Act, chapter 90.58 RCW and applicable shoreline permit, variance and  
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1 conditional use regulations of the Department of Ecology constitute  
2 the criteria for our review of the proposed development in this case.  
3 RCW 90.58.140(2)(b) and (3) and RCW 90 58 100(5). We decline  
4 appellants' request to determine whether another route for the  
5 proposed trail would better suit those criteria

6 V

7 Appellants bear the burden of proof. RCW 90.58.140(7). In  
8 summary, appellants have not proven that the shoreline permit in  
9 question is inconsistent with the BSMP or chapter 90 58 RCW, the  
10 Shoreline Act. Neither have they proven the permit to be inconsistent  
11 with applicable criteria of the Department of Ecology for conditional  
12 uses or variances. Appellants have shown a violation of WAC  
13 173-14-110(7) and BSMP Chapter VIII requiring a shoreline application  
14 to contain dimensions of proposed structures. The shoreline permit  
15 granted by the City of Bothell should therefore be remanded for  
16 selection of one of the Bridge designs contained in the application  
17 (Exhibit R-10 on this record).

18 VI

19 Any Finding of Fact which should be deemed a Conclusion of Law is  
20 hereby adopted as such.


21 From these Conclusions the Board enters this

ORDER

This matter is remanded to the City of Bothell with instructions to issue a shoreline substantial development, conditional use and variance permit in the same form as previously but with specification of one bridge design from King County's application (Exhibit R-10 on this record).

DATED this    day of September, 1982.

SHORELINES HEARINGS BOARD

  
WILLIAM A. HARRISON  
Administrative Law Judge